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(2)

No. 85-1005

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

JACK DUCKWORTH,
SUPERINTENDENT, INDIANA STATE PRISON

Petitioner,

v.

DIRK WEBSTER,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

BRIEF IN OPPOSITION

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INTRODUCTION

The petition for a writ of certiorari omits relevant facts and distorts the ruling of the court of appeals. The decision of the court of appeals was based on precedent established by this Court and presents no novel or important questions of federal law worthy of this Court's attention. In fact, the central issue upon which petitioner seeks review relates to a hypothetical situation not presented by the facts of this case.

STATEMENT OF THE CASE

A. Course of Proceedings.

Petitioner's recitation of the course of proceedings omits one key fact. As of July 18, 1985, the court of appeals had not yet issued its mandate directing the issuance of a writ of habeas corpus. The mandate of the court of appeals did not issue until September 19, 1985. Thus, the writ of habeas corpus, entered pursuant to the district court's order of July 18, 1985, was issued sua sponte, and not pursuant to the mandate of the court of appeals.

B. Facts Material to the Consideration of the Questions Presented.

State Court Proceedings.

Respondent Dirk Webster was charged with the murders of Robin Thomas and Betty DeBowles. (R. I at 6.)*/ The principal witness against Webster was former co-defendant Aurelius James Allen. Allen agreed to testify against Webster, and others, as part of a plea agreement pursuant to which Allen pled guilty to charges of manslaughter and robbery in exchange for the dismissal of the two murder counts and a recommendation of a six-year sentence. (R. I at 149-150, 402-403) Prior to testifying in Webster's first trial, Allen had told a number of different versions of the

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*/ R. I refers to the transcript of proceedings in appellant's initial trial. R. II refers to the transcript of proceedings in appellant's second trial.

Thomas/DeBowles murders some of which implicated Webster, while others implicated two different individuals. (R. II at 360-373.)

When Allen was called as a prosecution witness in Webster's first trial, he failed to implicate Webster. (R. I at 147-247.) The prosecution then sought to use Allen's prior testimony to refresh his recollection and ultimately to impeach him. (R. I at 182-247, 350-380, 452-484.) The statements selected by the prosecution were those versions of the murders which implicated Webster. When Allen was confronted with this testimony, he invariably stated both that he could not remember the events surrounding the murders and that he could not remember giving testimony which implicated Webster. (R. I at 182-247, 350-380.) Allen persisted in these denials even after being threatened with the rescission of his plea agreement. (R. I at 162-172, 345-349, 402-414, 421-422.)

The prosecution first sought to use Allen's prior testimony during Allen's direct examination. At that time, defense counsel requested an instruction limiting the use of that testimony to impeachment. Initially, the trial court deferred ruling on that request, but later the court warned the prosecution that Webster might be entitled to the limiting instruction. The trial court also observed that Allen's prior testimony appeared to be the key evidence against Webster. (R. I at 181-182, 390-395.)

When Allen's prior testimony was subsequently read into the record, defense counsel renewed his request for a limiting instruction. (R. I at 452-484.) The trial court again indicated that it might give the limiting instruction after further consideration. Before the prosecution rested, it was aware that the limiting instruction would be given as a final instruction. (R. I at 486-487.)

The defense rested immediately after the prosecution closed its case. The court then distributed its proposed

final instructions. The prosecution stated that it had no objection to any of those instructions. (R. I at 495.)

Proposed instruction number eight,*/ the limiting instruction given by the court, read as follows:

> During the course of this trial, certain questions were propounded to witness, Aurelius James Allen, by the prosecutor regarding prior inconsistent statements allegedly made by him to which he almost always answered "I don't remember." The questions so propounded were not evidence and are not to be considered by you as evidence. Subsequently, the prosecutors were permitted to read into evidence statements that were agreed by the parties to have been made by the witness Aurelius James Allen, prior to this trial. The statements were admitted by the court for the limited purpose of attempting to impeach or impugn the veracity or truthfulness of that witness and for no other purpose. They may not be considered by you as evidence against the defendant, Dirk Webster, who was not present when the statements were made, and was denied meaningful cross-examination of the witness during the course of this trial. (R. I at 59.)

Notwithstanding the limitation on the use of Allen's prior testimony, the jury returned a verdict of guilty on both counts.

On direct appeal to the Supreme Court of Indiana, Webster raised nine issues for review. The Indiana Supreme Court reached only one of those issues -- that the evidence presented was insufficient to support a finding of guilt beyond a reasonable doubt. After reviewing the evidence which tied Webster to the murders, the Indiana Supreme Court concluded:

> Having reviewed the sufficiency claim in this light, we must conclude that the substantive evidence which the jury could consider does not support a conclusion of guilt. (Petitioner's Appendix at A-35.)

According to the Indiana Supreme Court, the trial court's instruction limiting the use of Allen's prior testimony had rendered the prosecution's case insufficient.

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*/ Because one proposed instruction was dropped at Webster's request, proposed instruction eight was read as instruction seven. (R. I at 59.)

(Petitioner's Appendix at A-37.) The Indiana Supreme Court did not hold that the trial court erred in giving that limiting instruction. It did not even discuss whether Webster was entitled to the limiting instruction. It did criticize the trial court's timing in issuing the instruction:

> If that ruling had been made earlier the prosecution would have had an opportunity at the trial to offer other available proof to bolster its case. (Petitioner's Appendix at A-38.)

In the opinion of the Indiana Supreme Court, the prosecution could have reasonably believed that Allen's prior testimony would come in as substantive evidence, until the trial court gave the limiting instruction.*/ (Petitioner's Appendix at A-38.) According to the Indiana Supreme Court, the timing of the limiting instruction deprived the prosecution of a fair opportunity to present additional evidence against Webster.**/ Upon that basis, it believed Webster could be retried, notwithstanding its finding of evidentiary insufficiency. (Petitioner's Appendix at A-37, A-38.)

Justice Prentice of the Indiana Supreme Court dissented as follows:

> It is the viewpoint of the majority that, but for the lateness of the admonition limiting the application of Allen's prior testimony, the State may have presented additional incriminating evidence and that it was, therefore, somehow denied a fair opportunity to offer its best evidence. . . . Nevertheless, the acquitted defendant cannot be retried -- even though the ruling excluding the evidence be later reversed as a reversed [sic] question. I do not believe that the Burks opinion permits speculation as to why sufficient substantive evidence was not presented or upon what additional

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*/ At the time of Webster's first trial, it appears that the law of Indiana was somewhat unclear as to whether Webster was entitled to a limiting instruction. The Indiana Supreme Court has since ruled that a limiting instruction should be given in circumstances identical to those confronting the court in Webster's initial trial. Watkins v. State, 446 N.E.2d 949, 960 (Ind. 1983).

**/ At no time did the prosecution request the opportunity to present additional evidence against Webster even though it was warned that the limiting instruction might be given. The Indiana Supreme Court's opinion made no reference to those warnings. (R. I. 390-395, 484-488)

> evidence might be forthcoming if the prosecution is given another try. Rather, it is my opinion that the rationale behind the double jeopardy proscription is simply that, considering the resources available to the State and the grave injustice done one who is erroneously brought to trial, it behooves the State to prosecute only upon firm evidence and then to bring forth its best case or suffer the consequences. Accordingly, I would order an acquittal in this case. (Petitioner's Appendix at A-39.)

Upon retrial, Webster was again convicted. The Indiana Supreme Court affirmed that conviction. (Petitioner's Appendix at A-43.)

Federal Court Proceedings.

On June 2, 1983, Webster filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Indiana, raising only one issue -- whether it was a violation of the prohibition against double jeopardy to retry the defendant after his initial conviction was reversed upon the grounds of insufficient evidence. (Petitioner's Appendix A-26.) The district court denied Webster's petition upon the ground that Webster's original conviction was reversed due to trial court error, not insufficient evidence. (Petitioner's Appendix A-29.) In so holding, the district court acknowledged that: "This court would be less than candid if it were to say that this is not a close call." (Petitioner's Appendix A-29.)

On November 18, 1983, the district court certified that there was probable cause for an appeal. On appeal to the United States Court of Appeals for the Seventh Circuit, Webster raised one issue: whether it was a violation of the constitutional prohibition against placing a defendant twice in jeopardy to order Webster to be retried after his initial conviction was reversed due to the insufficiency of the evidence. (Petitioner's Appendix A-1, A-2.) On July 11, 1985, the court of appeals resolved that issue in Webster's favor, reversed the judgment of the district court and remanded the case with instructions to issue a writ of habeas corpus. (Petitioner's Appendix A-19.)

In reaching its decision, the court of appeals made the following determinations:

(1) Webster's initial conviction was reversed due to the insufficiency of the evidence, not trial error. (Petitioner's Appendix A-13.)

(2) The Indiana Supreme Court did not hold that the trial court had erred in limiting the use of Allen's prior testimony. (Petitioner's Appendix A-14.)

(3) The State of Indiana failed to object to the instruction limiting the use of Allen's prior testimony, thus waiving any objection to that instruction. (Petitioner's Appendix A-14.)

(4) The prosecution was not denied a fair opportunity to present additional substantive evidence against Webster. (Petitioner's Appendix A-16.)

(5) Even if the trial court had committed error which prejudiced only the prosecution, if Webster's conviction was reversed due to insufficient evidence, Webster could not be retried consistent with the double jeopardy clause. (Petitioner's Appendix A-17.)

Each of those determinations was correct.

REASONS FOR DENYING THE WRIT

The petition for a writ of certiorari raises no important constitutional or statutory issues. Essentially, the court of appeals agreed with Webster that: his initial conviction was reversed due to the insufficiency of the evidence, that that evidentiary insufficiency was not the result of trial error, that even had the trial court erred the State of Indiana had waived any such error, and that even if the error had not been waived Webster could not be retried. The court of appeals resolved those issues based upon the unique facts and circumstances of the case as well as the applicable law of Indiana.

In seeking review, petitioner asks this Court to reject the court of appeals' determination as to the basis for the reversal of Webster's initial conviction, as

reflected in the record, as well as its interpretation of the law of Indiana. In so doing, Petitioner asks this Court to review a hypothetical factual situation. Indeed, in view of Webster's release from custody, even that hypothetical issue is moot.

Given, the particular factual context in which this case arises, the clarity of the precedent upon which the court of appeals decision was based, and the absence of any novel or important federal question, the petition for certiorari should be denied.

I.

The Issues Raised by Petitioner Are Moot Because of Webster's Release from Custody.

On July 11, 1985, the court of appeals rendered its initial decision, reversing the judgment of the district court. Under the applicable rules, the mandate of the court would not have issued any earlier than August 1, 1985. Fed. R. App. P. 41. Ultimately, the mandate was issued on September 19, 1985, seven days after the denial of the state's petition for rehearing. (Appendix at A-1.) Notwithstanding the absence of a mandate, on July 18, 1985, the district court issued a writ of habeas corpus ordering respondent's immediate release from custody. Shortly thereafter, respondent was released from custody.

The district court's order of July 18, 1985 purports to be made pursuant to the mandate of the court of appeals. (Appendix at A-2.) However, because the mandate had not yet issued, the district court must have been referring to the opinion of the court of appeals.

In apparent recognition of the underlying strength of the court of appeals' opinion,*/ the district court acting sua sponte, and not pursuant to the court of appeals' mandate,

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*/ In light of the district court's prior recognition that this was "a close call" (Pet. App. at A-29), it is only reasonable to believe that the district court acted in recognition of the underlying strength of the opinion.

issued the writ of habeas corpus which resulted in Webster's release. The State of Indiana has not appealed from the issuance of the writ which resulted in Webster's release and the time to do so has expired. Fed. R. App. Proc. 4.

Inasmuch as respondent has been released from custody pursuant to a separate writ of habeas corpus, there is no longer any actual controversy relating to the decision of the court of appeals. Accordingly, the issues raised by petitioner are moot. See Pasadena City Board of Education v. Spangler, 427 U.S. 424, 430, 96 S.Ct. 2697, 2701, 2702 (1976); North Carolina v. Rice, 404 U.S. 244, 248, 92 S.Ct. 402, 404, 405 (1971).

II.

The Seventh Circuit Correctly Determined that Webster's Initial Conviction Was Reversed Due to Evidentiary Insufficiency.

In an apparent attempt to confuse the issues, petitioner continues to assert that the Supreme Court of Indiana reversed Webster's initial conviction due to trial error, rather than evidentiary insufficiency. (Petition at 5, 20.) Petitioner seeks to force the basis for the reversal of Webster's initial conviction into the "trial error" pigeonhole to avoid the precedent of Burks v. United States, 437 U.S. 1, 98 S.Ct. 2141 (1978). That attempt must fail in light of the unequivocal language of the Indiana Supreme Court.

At the outset of its initial opinion, the Indiana Supreme Court noted that Webster had presented nine issues for review, but that it need discuss only one -- "that the evidence presented by the State was insufficient to support a finding of guilt beyond a reasonable doubt." (Petitioner's Appendix at A-32.) After reviewing the substantive evidence against Webster, the court concluded,

> Having reviewed the sufficiency claim in this light, we must conclude that the substantive evidence which the jury could consider does not support a conclusion of guilt. (Petitioner's Appendix at A-35.)

In its second opinion, the Indiana Supreme Court confirmed that Webster's initial conviction was reversed due to insufficient evidence, when it again sought to justify his retrial by distinguishing Burks:

> [w]hile in the usual case a reversal for evidentiary insufficiency precludes a retrial because of double jeopardy considerations, [citation omitted], the Burks rationale does not apply in this case. (Petitioner's Appendix at A-41.)

Any remaining doubt as to the basis for the reversal of Webster's initial conviction is removed by the clear language of Justice Prentice's dissent:

> I do not believe that the Burks opinion permits speculation as to why sufficient substantive evidence was not presented. . . . (Petitioner's Appendix at A-39.)

As is apparent from the Indiana Supreme Court's opinions, that court reversed Webster's initial conviction, due to the insufficiency of the evidence, but mistakenly believed that Burks permitted them to order a new trial. (Petitioner's Appendix at A-37.)

III.

The Limitation on the Use of Allen's Prior Testimony Was Not Erroneous.

Petitioner's entire argument hinges upon the premise that the trial court erred in limiting the use of Allen's prior testimony. Petitioner's position may be summarized as follows: Webster's initial conviction was reversed due to trial error because the evidence would not have been insufficient if the trial court had not erroneously limited the use of Allen's prior testimony, or alternatively, even though Webster's conviction was reversed due to the insufficiency of the evidence, Webster may be retried because the evidentiary insufficiency was the result of trial court error.*/

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*/ Petitioner concedes that normally, a defendant whose conviction is reversed due to evidentiary insufficiency cannot be retried. Burks v. United States, 437 U.S. 1, 98 S.Ct. 2141 (1978); Petition at 14, 15.

Regardless of how it is phrased, petitioner's position depends upon the premise that the trial court erred in limiting the use of Allen's prior testimony. That premise is not supported by the record. The court of appeals correctly found that the limitation on the use of Allen's prior testimony was not erroneous, and that even if it were erroneous, the State of Indiana waived any objection to the limiting instruction. (Petitioner's Appendix A-14.) As the court of appeals further observed,

> Nothing the trial court said or did kept out any admissible evidence or lulled the prosecutor into a false sense of security.
>
> The prosecutor's erroneous prediction of the sufficiency of the evidence cannot distinguish this case from Burks.

(Petitioner's Appendix A-24.)

Under these circumstances, where the record clearly indicates that petitioner's position lacks merit, certiorari should be denied. Hodges v. United States, 368 U.S. 139, 139-40, 82 S.Ct. 235, 236 (1961). Indeed, certiorari should be denied, even in those cases where the record is merely cloudy with respect to the determinative facts upon which petitioner relies. Jones v. State Board of Education of Tennessee, 397 U.S. 31, 90 S.Ct. 779, 780 (1970).

To reach the central issue presented by petitioner, this Court would have to reject the court of appeals' determinations regarding the propriety of the limiting instruction and the effect of the state's failure to object to that instruction. However, such determinations of local law, by a court of appeals, are entitled to great deference and are not an appropriate subject of review.*/ Clearly, they do not present important questions of federal law worthy of this Court's attention. C.I.R. v. Estate of Bosch, 387 U.S. 456, 462, 87 S.Ct. 1776, 1781 (1967); Pierson v. Ray, 87 S.Ct. 1213, 1219, 1220 (1967); Cort v. Ash, 422 U.S. 66, 72,

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*/ The propriety of those determinations is confirmed by Watkins v. State, 446 N.E.2d 949, 960 (Ind. 1983); see also Carter v. State, 412 N.E.2d 825, 828-31 (Ind. App. 1980) and Ind. R. Cr. P. 8(b).

95 S.Ct. 2080, 2085 fn.6 (1975); United States v. Durham Lumber Co., 363 U.S. 522, 526, 527, 80 S.Ct. 1282, 1284, 1285 (1960); Wolf v. Weinstein, 372 U.S. 633, 636, 83 S.Ct. 969, 972 (1963).

IV.

The Seventh Circuit Correctly Determined that Respondent's Retrial Was Barred by the Double Jeopardy Clause Regardless of Whether the Trial Court Erred in Limiting the Use of Prior Testimony.

Assuming arguendo that the trial court's limitation on the use of Allen's prior testimony was erroneous, the court of appeals correctly determined that Webster could not be retried once his initial conviction was reversed due to the insufficiency of the evidence. (Petitioner's Appendix A-17.) That determination was neither novel nor in conflict with the precedent of this Court or any other circuit court of appeals. Indeed, that holding was dictated by the precedent of Burks v. United States, 437 U.S. 1, 98 S.Ct. 2141 (1978); Sanabria v. United States, 437 U.S. 54, 98 S.Ct. 2170 (1978); and Tibbs v. Florida, 457 U.S. 31, 41, 102 S.Ct. 2211, 2218 (1982).

Burks established that when a conviction is reversed on appeal due to the insufficiency of the evidence as opposed to trial error,*/ the double jeopardy clause precludes retrial of the defendant. Burks v. United States, supra, 437 U.S. at 15-17, 98 S.Ct. at 2149-2150. Sanabria further clarified that where a defendant is acquitted by the court because of insufficient evidence, the double jeopardy

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*/ In Burks, trial error was defined as "a determination that a defendant has been convicted through a judicial process which is defective in some fundamental respect." Burks, supra, 437 U.S. at 15. Thus, the court of appeals correctly observed that "trial error" within that context means error that prejudices the defendant, not the state. (Petitioner's Appendix A-17.) See also, Sumpter v. DeGroote, 552 F.2d 1206, 1211-12 (7th Cir. 1977).

A trial court error favorable to the defendant could hardly have led to the defendant's conviction. Such an error would be harmless. Feela v. Israel, 727 F.2d 151, 157 (7th Cir. 1984); United States v. Baker, 722 F.2d 343, 346 (7th Cir. 1983), cert. denied, Baker v. United States, 104 S.Ct. 1312 (1984); United States v. Anderson, 716 F.2d 446, 449 (7th Cir. 1983).

clause bars retrial of the defendant, even though the evidentiary insufficiency was the result of the trial court's erroneous exclusion of evidence. Sanabria v. United States, supra, 437 U.S. at 69-70, 98 S.Ct. at 2181. See also Fong Foo v. United States, 369 U.S. 142, 82 S.Ct. 671 (1969).

The only conceivable distinction between Sanabria and this case is that in Sanabria the trial court recognized that its evidentiary ruling rendered the evidence insufficient, and thus entered a judgment of acquittal. Sanabria v. United States, supra, 437 U.S. at 68-69, 98 S.Ct. at 2181.

However, for purposes of double jeopardy protection, a finding of evidentiary insufficiency by a reviewing court has the same effect as an acquittal by the trial court -- it absolutely shields a defendant from retrial. Richardson v. United States, 104 S.Ct. 3081, 3086 n.5 (1984); Tibbs v. Florida, supra, 457 U.S. at 41, 102 S.Ct. at 2218; Burks v. United States, supra, 437 U.S. at 11, 12, 98 S.Ct. at 2147; United States v. Sisson, 399 U.S. 267, 290, 90 S.Ct. 2117, 2129-2130 (1969). See also United States v. Martin Linen Supply Co., 430 U.S. 564, 572-573, 97 S.Ct. 1349, 1354-1355 (1977).

Accordingly, once it is determined that the evidence is insufficient to sustain a conviction, no further inquiry is necessary; that defendant is absolutely protected from retrial. As the court of appeals here stated:

> . . . regardless of whether a trial court commits error that results in prejudice only to the prosecution, if the conviction is reversed for insufficient evidence, the reviewing court is barred by the double jeopardy clause from ordering a retrial (Petitioner's Appendix at A-17).

Petitioner cites a number of cases purportedly in conflict with the decision of the court of appeals.*/ None of those cases is apposite; there is no conflict between the circuit courts of appeals. In each of the cases cited by

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*/ Petitioner's perceived conflict ignores the court of appeals' finding that here the trial court committed no error prejudicial to the prosecution. (Petitioner's Appendix at A-14, A-24)

petitioner, reversal of the defendant's conviction was based on trial error which prejudiced the defendant, not the prosecution. United States v. Mandel, 591 F.2d 1347 (4th Cir. 1979), cer . denied, 445 U.S. 961 (1980); United States v. Harmon, 632 F.2d 812 (9th Cir. 1980); United States v. Fiore, 443 F.2d 112 (2d Cir. 1971), cert. denied, 410 U.S. 984 (1973); Tapp v. Lucas, 658 F.2d 383 (5th Cir. 1981), cert. denied, 456 U.S. 972 (1982); Tapp v. State, 347 S.2d 974 (Miss. 1977), 373 S.2d 1029 (Miss. 1979); United States v. Coward, 669 F.2d 180 (4th Cir.), cert. denied, 456 U.S. 946 (1982).

The only other court of appeals to address the effect of trial error prejudicial to the prosecution has resolved that issue consistent with the decision in this case. United States v. Ember, 726 F.2d 522 (9th Cir. 1984).

In Ember, the district court had excluded evidence crucial to the government's case. Since without that evidence the government's case was insufficient, the district court entered a judgment of acquittal. 726 F.2d at 523, 524. In dismissing the government's appeal from that order, the court of appeals noted that the double jeopardy clause would bar a retrial of the defendant, even if the government's case was rendered insufficient as a result of erroneous evidentiary rulings. 726 F.2d at 524.

In sum, the decision of the court of appeals was based on adherence to precedent established by this Court, does not conflict with the decisions of any other court of appeals and presents no novel or important federal question.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: January 13, 1986

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September 19, 1985

Mr. Richard E. Timmons
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South Bend, Indiana 46601

FILED
SEP 24 1985
RICHARD E. TIMMONS, CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

Re: DIRK WEBSTER,
Petitioner-Appellant,
vs.
JACK R. DUCKWORTH, Warden, and the INDIANA ATTORNEY GENERAL,
Respondents-Appellees.

U.S.C.A.-7 No. 83-3096

District Court No. 83-C-306

Dear Clerk:

Herewith is the mandate of this Court in the above-entitled appeal. "A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate." (F.R.A.P. 41(a)). I am also returning the original record of your District Court, which was transmitted to this office for use on appeal.

Please acknowledge receipt on the enclosed copy of this letter.

Contents of Record:
1 V pleadings filed 11-28-83,
2 V transcripts filed 11-28-83, and
5 V briefs from State records,

(entire record).

Sincerely yours,
THOMAS F. STRUBBE, Clerk

Lupe Calderon

By: Lupe Calderon
Deputy Clerk

Date: 9-24-85

ENTERED
SEP 30 1985
ON DOCKET

Received above mandate and record from the Clerk of the United States Court of Appeals for the Seventh Circuit.

Ed Alba, Deputy
Clerk of District Court

Copies mailed to:
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Note to Counsel:

If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

DIRK WEBSTER, Petitioner,	)	
v.	)	CAUSE NO. S 83-0306
JACK R. DUCKWORTH, Warden and the INDIANA ATTORNEY GENERAL, Respondents.	)	

ORDER

In accord with the dictates of the Seventh Circuit Court of Appeals mandate in Webster v. Duckworth, No. 83-3096 (7th Cir., July 11, 1985), this court hereby GRANTS the writ of habeas corpus and hereby Orders the immediate and unconditional release of Dirk Webster from the custody of the State of Indiana. SO ORDERED.

Entered this 15 day of July, 1985.

Allen Sharp

CHIEF JUDGE, UNITED STATES DISTRICT COURT

cc: Webster
Wente
Warden Duckworth
Order book